

Appln. No. 10/782,112

Amendment dated March 15, 2005

Reply to Office Action mailed December 15, 2004

REMARKS

Reconsideration is respectfully requested.

Claims 1 through 4 and 6 through 9 remain in this application. Claim 5 has been cancelled.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraphs 1-6 of the Office Action

Claims 1-2, 4, 6 and 8 have been rejected under 35 U.S.C. §102(b) as being anticipated by Kurpieski.

Claims 3, 5, 7 and 9 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Kurpieski in view of Yoshida.

In regard to claim 1 and 9, it is submitted that the combination of Kurpieski with Yoshida is not suggested by the prior art, and even if such a combination were to be made, one would not be led to the combination of features recited in applicants' claims. In particular, the references do not disclose, teach or suggest "said body member comprising a pair of side edges, one of said side edges being positioned opposite the other one of said side edges of said body member, said body member tapering outwardly to said side edges to provide a smoother junction with the wall when said body member is coupled to the wall". The Kurpieski reference teaches a back scratcher that fails to teach the body member tapering towards to the side edges of the body member to allow a smooth transition from the wall to the body member as claimed by the applicant. The Yoshida reference teaches a support for a backrest and seat of seat furniture that fails to teach the body member tapering towards to the side edges of the body member to allow a smooth transition from the wall to the body member as claimed by the applicant. Further, the Yoshida reference teaches away from that claimed by the applicant in that the Yoshida reference teaches the first projection and the second projection pivotally movable around shafts that are coupled

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to the ends of the arms as shown in Figure 5 and describes in column 4 line 66 through column 5 line 2 and therefore the shafts and projections would prevent the arms from sitting flush with a wall as is suggested in the Office Action. It is respectfully submitted that the Examiner has improperly used applicant's claims as a recipe for selecting and combining isolated elements of various references and has used the benefits achieved by applicant's claimed structure--benefits described only in applicant's disclosure--in hindsight as the motivation for making the asserted combination of references.

Presuming arguendo that the references show the elements or concepts urged by the examiner, the examiner has presented no line of reasoning, and we know of none, as to why the artisan viewing only the collective teachings of the references would have found it obvious to selectively pick and choose various elements and/or concepts from the several references relied on to arrive at the claimed invention. In the instant application, the examiner has done little more than cite references to show one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

Ex parte Clapp, 227 USPQ 972, 973 (PTO Bd. App. 1985)

Therefore, it is submitted that the combination of the Kurpieski reference with the Yoshida reference would not lead one to the combination of features as claimed by the applicant.

Claims 2 through 4 and 6 through 8 are dependent upon claim 1, particularly as amended, and therefore incorporate the requirements of claim 1. Thus, claims 2 through 4 and 6 through 8 are also believed to be allowable over the cited reference.

Claim 5 has been cancelled.

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Withdrawal of the §102(b) rejection of claims 1-2, 4, 6 and 8 is therefore respectfully requested.

Withdrawal of the §103(a) rejection of claims 3, 5, 7 and 9 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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By 

Date: 3/15/05

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